IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 829 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NILESH LALIT PAREKH

Versus

STATE OF GUJARAT

Appearance:

None present for Petitioner

MR SAMIR J DAVE, APP, for Respondent No. 1

RULE UNSERVED for Respondent No. 2

MR HM PARIKH for Respondent No. 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 09/01/2001

ORAL JUDGEMENT

#. The matter was called out for hearing in the first round in first sitting then in the second round and lastly in the third round in second sitting but none

present for the petitioner. Perused the special criminal application and heard the learned counsel for the respondents.

#. The petitioner prayed for the following reliefs:

(a) that this Hon'ble Court may be pleased to call for the records and proceedings in Criminal Complaint being C.C. No.429/98 pending before the learned Judicial Magistrate, First Class, Kheda, Gujarat including the process issued therein by the Judicial Magistrate First Class, Kheda, Gujarat inter alia, against the petitioner and after making enquiries and after going through the records and proceedings and the legality of the order of issuance of process, this Hon'ble Court be pleased to quash and set aside the said complaint being C.C. No.429/98 and the order issuing process, pending before the learned Judicial Magistrate First Class, Kheda, Gujarat.

(b) that a writ of certiorari or an order or a direction in the nature of certiorari or any other appropriate writ, order or direction be issued to the learned Judicial Magistrate First Class, Kheda, Gujarat directing that further proceedings in Criminal Complaint No.429/98 pending before the learned Judicial Magistrate First Class, Kheda, Gujarat be stayed.

(c) Pending the hearing and final disposal of this petition further proceedings in Criminal Case No.429/98 pending before the learned Judicial Magistrate First Class, Kheda, Gujarat filed by respondent No.3 be stayed.

(d) interim and ad-interim relief in terms of prayer clause (c) above be granted.

(e) other and further relief as the nature and circumstances of the case may require.

#. The respondent No.2-company was incorporated in the style of M/s Enarai Investment and Consultancy Service (India) Pvt. Ltd. on 13-3-1985. On 17-12-1985, the respondent No.2-company was converted into a public limited company. On 29-4-1993, the name of the respondent No.2 was changed from M/s. Enarai Investment and Consultancy Services (India) Pvt. Ltd. to Enarai Finance Ltd. and fresh certificate of incorporation was obtained. In May, 1993, the company received

authorisation as category (I) Merchant Banking from SEBI. On 5-3-1998, Mrs. Pratibha Kapur, a creditor filed a company petition No.275/98 in this Court for winding up of the respondent No.2 company. On 23-5-1998, consent terms were filed in the above referred company petition. In April, 1998, the respondent No.3 filed a complaint under section 138 read with section 142 of the Negotiable Instruments Act, 1881, before the Judicial Magistrate First Class, Kheda, and process and summons were issued. Hence, this petition before this Court.

#. It is the grievance of the petitioner that after presentation of the winding-up petition, a debt or liability under a dishonoured cheque is not legally enforceable. Referring to provisions of section 441, 446 and 536 of Companies Act, 1956, it is averred that no process could have been issued by the Judicial magistrate in the complaint filed by the respondent No.3 under section 138 read with section 142 of Negotiable Instruments Act, 1881.

#. I do not find any merits in any of the contentions. The criminal liability of the company for dishonoured cheque is not to be stayed by the court merely because a winding-up petition has been filed against the company. Section 138 of the Negotiable Instruments Act works in the field where a cheque issued by the company is dishonoured. It is a criminal offence for which the concerned person has to be punished and sentenced. It is not a case of any recovery of the money. I fail to see how it is correct to contend on behalf of the petitioner that it is a case of recovery of money i.e. a debt or liability against the company. Sections 441, 446 and 536 of the Companies Act, 1956 are of little help to the petitioner in this case.

#. In the result, this special criminal application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted stands vacated. No order as to costs.

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zgs/-